IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1609 of 2001

with

FIRST APPEAL No 3311 of 2001

with

FIRST APPEAL No 3312 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ.STATE ROAD TRANSPORT CORP

Versus

JASHODABEN WD/O MANIBHAI DHULABHAI PADHIAR

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Appearance:

1. First Appeal No. 1609 of 2001

MR ASHISH H SHAH for Appellant

MR MTM HAKIM for Respondents No. 1-6

NOTICE SERVED for Respondent No. 7

2. First Appeal No. 3311 of 2001

MR MTM HAKIM for Appellant
NOTICE SERVED for Respondent No. 1

3. First Appeal No. 3312 of 2001
MR MTM HAKIM for Appellant
MR ASHISH M DAGLI for Respondent No. 1

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CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.H.KADRI

Date of decision: 17/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals under section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act), wherein each of the appellants has challenged the common judgement and separate awards passed by the Motor Accident Claims Tribunal (A-III), Kheda in a group of claim petitions filed under section 166 of the said Act. It requires to be noted that each of the appellants has filed these appeals on different aspects of the impugned judgement and the resultant awards.

2. First Appeal No.1609/2001 has been filed by the Gujarat State Road Transport Corporation being the owner of the bus involved in the accident, challenging the award in Motor Accident Claim Petition No.1390/92.

2.1 First Appeal No.3311/2001 has been filed by the claimant in the very same claim petition viz. Motor Accident Claim Petition No.1390/92. Thus, these two appeals are cross appeals arising from the same award.

2.2 First Appeal No.3312/2001 has been filed by the claimant in Motor Accident Claim Petition No.1389/1992.

3. Since all these three appeals arise from common judgement of the Tribunal as aforesaid, they can conveniently be dealt with and disposed of by the present common judgement.

4. So far as the First Appeal No.3312/2001 is concerned, Mr. Hakim, learned counsel for the appellant states that he does not press the said appeal on behalf of the appellant therein. This appeal is, therefore, disposed of accordingly with no order as to costs.

5. As aforesaid, First Appeal Nos.1609/2001 and First Appeal No.3311/2001 are cross appeals arising from the common judgement and the same award passed in Motor Accident Claim Petition no.1390/92.

6. So far as First Appeal No.3311/2001 filed by the claimant in the claim petition before the Tribunal is concerned, the scope therein is restricted to only one submission. Learned counsel for the appellant in this appeal does not press for enhancement of the compensation awarded. The only contention raised in this appeal is that the appellant-original claimant would be entitled to compensation as determined, but the recovery of the same would not be restricted to one-half against each of the two joint tort-feasors viz. the Gujarat State Road Transport Corporation and the driver of the two wheeler on which the husband of the claimant was a pillion rider.

6.1 To be more specific, this contention arises from the fact that the Tribunal, after determining the compensation payable to the claimant Jasodaben and other claimants, deducted 50% of the compensation payable to the claimants on the basis that the driver of the motorcycle viz. son of Jasodaben was a contributory to the accident to the extent of 50%. In this context it must be distinctly understood that the claim of the claimants arose on account of death of Manibhai who was a pillion rider on the motorcycle being driven by Gopalbhai. Thus, the claim was presented by the heirs of the deceased Manibhai. Obviously, Manibhai and consequently the heirs of Manibhai are third parties so far as the drivers and owners of the two vehicles involved in the accident are concerned. Thus, once the compensation payable to the heirs is determined on facts and evidence, this is the compensation effectively payable to third parties. This compensation would not be adversely affected merely on account of the fact that the driver of one of the vehicles involved in the accident was a contributory to the accident to a certain extent.

6.2 This principle is amply clarified and explained by a Division Bench decision of this Court in the case of Amarsi J. Driver Vs. Vijayaben H. Dhulia, reported in 37(3) GLR 493. This decision clearly lays down the principle that where two persons are negligent, the injured party (which would include the heirs of the deceased) can proceed at his option against both or either, and where only one party is sued, the other cannot contend that the second party is a necessary party. This principle has been clarified in paragraphs 22 and 26 of the said decision. Thus, in the context of

the appeal filed by Jasodaben and others, viz. First Appeal No.3311/2001, we find and hold that the said appellants would be entitled to the full amount of compensation determined due and payable to them, and the same would be recoverable from both the owners and drivers of the two vehicles involved in the accident. We may clarify here that the compensation in fact and as regards quantum which is due to them would be affected by our finding in the cognate appeal as determined hereinafter.

7. This would take us to the consideration of the appeal filed by the Gujarat State Road Transport Corporation, challenging the award passed in Motor Accident Claim Petition No.1390/92.

7.1 This appeal is sought to be pressed on quantum and merits. However, on the facts of the case there is no dispute that this appellant, being the owner of one of the offending vehicles, has challenged only one award out of the number of awards resulting from the common judgement. The question in law which would arise is as to whether a party can challenge only one of the number of awards passed as a result of common judgement in a group of cases, where the evidence is common, and yet contend that such an isolated appeal is maintainable.

7.2 A Division Bench of this Court (to which one of us was a party) has taken a contrary view in the matter, by judgement and order dated 6th November 2001 in First Appeal No.1719/2000. In the said decision the Bench has taken into consideration a number of decisions of the Supreme Court and has held on basic principles of res judicata, acquiescence and estoppel that where two suits have been consolidated, which result in a common judgement and two decrees, a single appeal challenging only one of the decrees is not maintainable. The same principle would apply in this appeal.

7.3 However, merely with a view to satisfy the conscience of the Court we have permitted learned counsel for the appellant to address us also on the merits of the award impugned in this appeal. We have permitted learned counsel for the appellant to address us on the quantum and merits, and particularly on the question of determination of the quantum of compensation justified in favour of the claimants. In this context we have heard the learned counsel for the appellants on the aspect of the current income of the deceased Manibhai, prospects of future income, determination of the mean datum figure and the application of appropriate multiplier. Without going

into a detailed discussion in respect of the evidentiary material on record, we may only record that as a result of the hearing and discussion, we are of the opinion that there is some scope for reduction of the amount of compensation payable to the claimants of claim petition no.1390/92. As a result of this tentative opinion, learned counsel for the respondents-original claimants in this appeal viz. Jasodaben and others, fairly stated that the total amount of compensation payable to this claimants may be reduced from Rs.5,42,000/- to Rs.4,90,000/-. In our opinion, after having examined the facts and evidentiary material on record, we are of the opinion that this is a fair and reasonable offer. Even otherwise, looking to the evidentiary material on record, learned counsel for the appellant is unable to satisfy us that any further reduction below this figure could possibly be justified.

8. In the premises aforesaid, we hold and direct that the claimants in Motor Accident Claim Petition No.1390/92 would be entitled to a total compensation of Rs.4,90,000/- (Rupees four lacs ninety thousand only) together with proportionate costs and interest (as directed by the Tribunal). Thus, First Appeal No.1609/2001 filed by the Gujarat State Road Transport Corporation is partly allowed with no order as to costs. There shall be a decree accordingly.

9. First Appeal No.3311/2001 filed by Jasodaben and others being claimants in Motor Accident Claim Petition No.1390/92, is also allowed to the extent that the rights of the claimants to realise the amount of compensation determined by us can be exercised against the drivers and owners of both the vehicles involved in the accident. It is clarified that this right can be exercised in respect of the total amount of compensation (together with costs and interest) as quantified by us in First Appeal No.1609/2001. This appeal is allowed to the aforesaid extent with no order as to costs. Decree accordingly.

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